92-2001

No.

Supreme Court, U.S.
FILED
JUN 1 6 1993

IN THE

Supreme Court of the United States

October Term 1992

MARSHALL P. SAFIR,

Petitioner,

v.

CSX CORPORATION,
CONNECTICUT NATIONAL BANK and
S/S UNITED STATES, Its Proceeds, *In Rem,*

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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June 18, 1993

CASILLAS PRESS, INC., 1717 K STREET, N.W., WASHINGTON, D.C. 20036

Questions Presented

Does the conflict between circuits raised over the issue first presented to this Court in *Safir v. Prudential Insurance Co. of America, cert. denied* 113 S.Ct. 379 (1992) now have the potential for damage to the integrity of the judicial system as to call for an exercise of this Court's power under the Hazel-Atlas Rule — where the appellee CSX Corporation had obtained an injunction with sanctions for vexatious litigation against the petitioner in a related action in the Second Circuit, and where in spite of uncontraverted new evidence of fraud on that court in obtaining it, the Second Circuit has refused to rescind it — the Fourth Circuit, in possession of the same uncontraverted evidence rejected a demand by CSX to uphold the Second Circuit injunction and to levy sanctions.

Whether the Fourth Circuit was in error when it held that intervention under General Admiralty Rule 42 while proceeds of a ship sale remained in the registry of the Court could be denied, without a hearing, to a person with an interest in those proceeds on grounds that additional litigation would prejudice other parties.

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IN THE

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CSX CORPORATION,
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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OPINIONS BELOW

The Opinion of the Court of Appeals of March 30, 1992 is appended (A1). Other relevant decisions include *Safir v. Prudential Insurance Co. of America, et al., cert. denied* 113 S.Ct. 379 (1992); *Safir v. Prudential Insurance Co. of America, et al, cert. denied,* 111 S.Ct. 129 *rehearing denied,* 111 S.Ct. 544 (1990); *Safir v. Nickerson, cert. denied,* 112 S.Ct. 57 (1991) *rehearing denied,* 112 S.Ct. 622 (1991); *Safir v. U.S. Lines, et al.,* 792 F.2d 19 (2nd Cir. 19 86) *cert. denied,* 479 U.S. 1099 (1987); *Safir v. United States Lines, et al.,* 616 F.Supp. 612 (EDNY 1985); *Safir v. Dole,* 718 F.2d 475 (D.C. Cir. 1983) *cert. denied,* 467 U.S. 1268 (1984); *Safir v. Klutznick,* 526 F.Supp. 921 (D.D.C. 1981); *In Re Marshall*

P. Safir, 108 S.Ct. 108 S.Ct. 496 (1987); *In Re Marshall P. Safir*, 108 S.Ct. 788 (1988); *Safir v. ICC & CSX Corp.*, 831 F.2d 283 (2nd Cir. 1987) *cert. denied*, 109 S.Ct. 520 (1988).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment below was entered on March 30, 1993.

STATUTES INVOLVED

28 USC § 1292(a)(3)
46 USC § 31325(d)(3)

RULES INVOLVED

General Admiralty Rule 42 — Claims Against Proceeds in Registry

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceedings, to intervene *pro interesse suo* for delivery thereof to him, and on due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or on a hearing, be dismissed the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

STATEMENT OF THE CASE

This petition is a sequel to the petition for certiorari to the Second Circuit in *Safir v. Prudential Insurance Co. of America, et al*, Docket 92-431 *cert. denied*, 113 S.Ct. 379 (1992). The statement of the case in the earlier petition discussed the rela-

tionship of the CSX Corporation and Prudential with the Safir maritime lien claim regarding vessels formerly owned by United States Lines Inc. and the history of the litigation pending in the US Court of Appeals for the Fourth Circuit up to the middle of August 1992 when the Court below suspended further briefing in *CSX* and *Conn. Nat'l Bank v. Safir* 4CCA Docket 92-1677.[1] The suspension was ordered on August 15, 1992, before the Safir petition in Docket 92-431 was filed but 10 days after the full record was transmitted to it from the district court. (A-23).

Appellants Informal Brief had been filed on August 7, 1993 setting forth failure to consider an adverse interest, the failure to consider a violation of the lien enforcement statute on the requirement for notice (46 USC § 31325(d)(3)) and requesting a remand directing recovery of the funds distributed and the implementation of a civil suit under that statute.

Although the Safir brief had been filed in 4CCA Docket 92-1677, appellees' motions to dismiss the appeal had remained outstanding. The motions were based primarily on grounds that the petitioner was prohibited by the existing New York district court injunction (1985, as modified in 1986) and prohibited by the Second Circuit appellate injunction with a $5000 sanction (1988) from pressing his interests against CSX and others. The motions in the Fourth Circuit further demanded similar sanctions under Rule 11 Fed R. of Civ. P. and Rule 38 of the Fed R. of App. Proc.

On March 30, 1993, the Fourth Circuit in a *per curiam* opinion specifically denied the motions to dismiss and denied the demand for sanctions against the petitions mindful of the uncontraverted record of fraud on the court alleged in the Safir affidavit to the Second Circuit and fully aware that the denial

---

[1]The appeal was consolidated with that of *NR Vessel Corp. v. Marmara Marine, Inc.* 4CCA Docket 92-1670.

of certiorari of October 19, 1993 in docket 92-431 could represent the Supreme Court's election to await the Fourth Circuit review. The Fourth Circuit promised in its Order of July 21, 1992 that it "would not limit its review solely to the issues raised in the parties briefs." These issues were listed in the Docketing Statement of the interlocutory appeal under 28 U.S.C. § 1292(a)(3) in 4CCA Docket 92-1677(A-8) filed by Safir as appellant as follows:

> 1. Whether admiralty sale proceeds in the hands of the Court can be distributed in toto where there are adverse interests vested in others whose rights were not yet adjudicated.
>
> 2. Whether the Safir motion for intervention which included his affidavit of February 21, 1992 (with 26 exhibits) to the United States Court of Appeals for the Second Circuit was probative against laches.
>
> 3. Whether the validity of the Safir maritime lien claim was so clear under the recent decision of the Supreme Court in *Exxon Corp. v. Central Gulf Lines, Inc.*, 111 S.Ct. 2071 (1991) as to make the hasty release of the funds improvident, clearly erroneous and an abuse of discretion.

The Court addressed the first question and held, contrary to every admiralty rule and American legal precedent since *Price v. Frankel*, 1 WASH.T. (1858), that the district court had discretion to do so. The Court then took several actions with the highest degree of brevity, each of which was manifestly in error.

These errors are addressed below but rather than diminish the impact of the refusal of the Fourth Circuit to follow the Second Circuit in sanctioning the petitioner, they emphasize that impact. By the manifest departure from the accepted and usual course of intervention in judicial proceedings, the Fourth

Circuit appears to have established the broader grounds for this petition as addressed below.

First, the Court declined to recognize that the appeal was filed under the statutory right of a non-party to the admiralty action for interlocutory relief under 28 USC § 1292(a)(3) when an order of the district court had the effect of determining his right to intervene in the district court under Rule 42 of the General Admiralty Rules. The action to satisfy the CSX lien on the SS United States and the intervention of the Connecticut National Bank for foreclosure were brought under Rule 9(h) of the Supplemental Rules of Civil Procedures for Certain Admiralty and Maritime Claims — specifically Rules C and E thereunder. The interlocutory appeal was filed on June 11, 1992, the District Court acted to dismiss the case on July 2, 1992.

The Court of Appeals in spite of the statutory authorization set forth in the Safir Docketing Statement (A-8 to A-15) indicated that the appeal itself was only permissive and subject to its discretion just as it maintained in its opinion that the district court would have had discretion under Rule 24(a)(2) of the Federal Rules of Civil Procedure in a class action suit. The Court cited as controlling its decision in a class action suit authorized under Rule 23 F.R.Civ. P. *Gould v. Alleco,* 883 F.2d 281, 286 (4th Cir. 1989), *cert. denied* 493 US 1058 (1990).

The Court, while noting that the district court did not act formally to deny the Safir motion nevertheless *in loco juris* decided that such action was justified — notwithstanding that the motion for intervention was filed on May 7, 1992 while the proceeds were in the court's registry. The Court held that the motion was not timely because it was made after the sale of the vessel and ratification of sale on May 4, 1992.

> "In addition, granting Safir's intervention motion would have prejudiced other parties. Granting his motion would have required additional litigation over the priority of recorded and non-recorded maritime liens because Safir maintains that he possesses a non-recorded maritime lien which arose prior to the ship's mortgage."

The Fourth Circuit General Rules for the District of Maryland (the District of Virginia has no rule to the contrary in regard to intervenors' claims) states:

> LAR(e)(9)(c) *Intervention After Sale*. After ratification of sale and payment of the purchase price, any person having a claim against the vessel or property that arose before ratification must present the same by intervening complaint, pursuant to LAR(e)(9)(a), against the proceeds of the sale and may not proceed against the vessel unless the Court shall otherwise order for good cause shown. Where an intervening complaint prays service of process *in rem*, the filing of such intervening complaint with the clerk shall be deemed to be a claim against such proceeds without the issuance of *in rem* process, unless the Court shall otherwise order for good cause shown. *The Court shall allow a period of at least thirty (30) days after due ratification of the sale for the submission of such claims*. (Emphasis added)

The General Admiralty Rules, specifically Rules 34 and 42 set forth how third parties may intervene and assert claims against the proceeds of vessel sales in the Registry of the Court. Funds in the registry are not to be paid where there are interests vested in third parties whose rights had not been inquired into. Not only were the plaintiffs, CSX Corp. and the Connecticut National Bank, aware of an adverse interest

through service by Safir of his motion on May 7, 1992, CSX was aware of that interest since 1987 being a party to the Safir litigation in the Second Circuit. Yet neither party fulfilled the obligation to notice Safir of a May 11, 1992 trial and hearing where the claims were ostensibly adjudicated.

This age old obligation has recently been clarified and statutorily codified under Chapter 313 — Commercial Instruments and Maritime Liens of the Shipping Laws of the United States; 46 USC § 31325(d)(3) which states:

> (3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

The amount of petitioner's interest in the vessel S.S. United States exceeds the proceeds of the sale by many multiples. CSX and the Bank are thus liable under the statute for a civil action to recover the amount of that terminated interest. CSX and the Bank, through counsel, in their motions to dismiss the appeal stated that the hearing, the trial and the Order of May 14, 1992 which directed the distribution of the entire proceeds, all occurred on that same day May 14, whereby Safir would have had seven days of grace (but not notice) to make an appearance of his own. The docket sheet in D.E.D.Va 91 Civ-141NN tells a different story.

There was no hearing or trial on May 14, 1992 at which this petitioner could appear. The docket sheet on page 12 (A-20) shows a minute entry for a hearing of May 11, 1992 and the Order for Disbursal dated May 14, 1992 and entry of the Order on May 18, 1992 (A-11to A-15).

The hearing on May 11, 1993 according to the Order states that the matters for decision on that day were to have been for in custodia legis expenses and the CSX claim for maritime tort. (A-11) Instead, with the Safir motion for intervention and stay on file as of May 7 the entire distribution of proceeds was precipatiously accelerated and incorporated in the Order. The Docket Sheet does not show entry of a transcript of the hearing of May 11, 1993. (A-22)

In addition to the clear intent of the Admiralty Rule 42 and indeed Civil Rule 24(a)(2) to protect against any impairment or impediment of the rights of a non-party and in addition to the local Admiralty rules approved by the Fourth Circuit, *supra*, the District Court is also bound by Rule 62(a) of the Fed. R. of Civ. P. wherein the Clerk is required to wait ten days from the date of entry to allow for motions for stay in that court or, failing in that court (as was the case here) then in the Court of Appeals.

The district judge issued no order to contravene Rule 62(a) nor was there an order of dismissal of the action so as to permit the Clerk discretion under the "due course" provision of Rule F(5)(c) of the Supplemental Rules in Admiralty. The clerk nevertheless improperly released the funds on May 21, 1992 as soon as the voucher from the U.S. Marshal cleared the bank and before a stay could be requested of the Court of Appeals. Shades of *The Rio Grande*, 23 Wall 458 (1875) as explained by Justice Blackmun in *Republic Nat'l Bank v. United States*, 61USLW 4027-4029 (1992) and as portended by Justice Kennedy in *Alyeska Pipeline Service Co. v. The Vessel Bay Ridge*, 703 F2d 381, 386 (9th Cir 1983).

On the basis of the foregoing, the Fourth Circuit's holding of prejudice to other parties because intervention would have required additional litigation — when, indeed, that additional litigation while the proceeds are in the registry is the purpose of both admiralty rule and precedent — is such a departure from accepted practice as to question whether the effect was intended. The effect of the holding is to prejudicially impair and impede the non-party's interest in a suit under 46 USC § 31325(d)(3) by working an estoppel during the period when the proceeds were in the registry, post sale and prior to distribution, to exonerate CSX and the Bank as mortgage trustee from their failure as parties-plaintiff to give notice to Safir when the entitlement to the proceeds was determined.

The unpublished opinion refers to I.O.P. 36.6, which states that citation is disfavored *except for the purpose of establishing res judicata, estoppel, or the law of the Case*. Petitioner is confronted with an affirmation of a non-existent district court decision with the gratuitous holding that such intervention would prejudice the violators of 46 USC § 31325(d)(3) when the violators' motions for dismissal (which did not claim such prejudice to themselves) were denied.

To compound the dilemma the transcript of a hearing before this district court on April 27, 1992 prior to sale of the vessel shows that CSX through counsel pleaded for a sixty day extension of time before the auction, citing a request from the US Maritime Administration.

When any timeliness analysis is factually combined with the legal rights of an intervenor such as this petitioner in an *in rem* admiralty context, the citation in the opinion of the denial of intervention in *Gould v. Alleco,* appears to be inapposite as well. Post-ratification of sale litigation, far from prejudicial to the plaintiffs, is requisite under the admiralty rules. This opinion of the Fourth Circuit has recast the appeal as if the

proceeding below as authorized under Rule 9(h) of the Federal Rules of Civil Procedure was not governed by the Supplemental Rules for Certain Admiralty and Maritime Claims.

REASONS FOR GRANTING THE WRIT

Petitioner believes that the Fourth Circuit was appalled by the evidence in the record before it that its sister circuit not only refused to uncover a fraud against itself but would maintain the victim of the fraud under injunctive restraint to avoid addressing the legal and ethical issues raised by the evidence. Rather than exonerate "the messenger" of the stigma of vexatious litigation, the Second Circuit opted for the judicial version of the ancient greek solution. The Fourth Circuit has now sent its own message.

This is the only explanation one can elicit from the Opinion of March 30, 1993, with its bifurcated dismissal of Docket 92-1677. CSX and the Bank through counsel in their motions to dismiss the appeal argued that this petitioner should be sanctioned under Rule 38 for disobedience of the Second Circuit injunction where that Court required petitioner to pay a $5,000 sanction to CSX, the rail carrier. Petitioner had objected in 1988 on appeal that the I.C.C. approval of the acquisition of Sea-Land Service, an American ship line using the Panama Canal was a violation of the Panama Canal Act 49 U.S.C.C § 11321(b). That injunction was the springboard for CSX-Sea-Land to purchase the US Lines Lancer Class vessels which are the subject of the "decimal point" mortgage fraud explained in the Safir affidavit in S.C. Docket 92-431.

The Fourth Circuit with the Affidavit in its record spotlighted its denial of the motions to dismiss. The Fourth Circuit action to then essentially dismiss the appeal (in the guise of affirmation of a non-existent order) on such unsupportable grounds as described above, can only be read as an LSAT estoppel

puzzle for a *pro se* layman to solve in this petition. It can also be read as a signal to this Court that the Fourth Circuit believes that once solved, the cause of action under 28 USC § 31325(d)(3) is cognizable in other circuits as well. Law becomes a travesty when procedural manipulations to avoid decision on the merits run out of gas. While aging, Petitioner is in no present danger of runing out of circuits, synapsic nor judicial. Petitioner prays that this Court under its power of supervision remove the contrived estoppel to his right of action under 46 USC § 31325(d)(3) in the Fourth Circuit.

CONCLUSION

Thus the Fourth Circuit has, contrary to its Order of July 21, 1992 (as reprinted on Page 5 of the Petition in 92-431) elected to eschew disclosure of its review. The message is clear that where there are differences of opinion between circuits as to how long continued suppression of facts can forestall damage to the judicial machinery "in the performance, in its usual manner, its impartial task of adjudging cases" — the conscience of the chancellor rests in the Supreme Court.

The remaining question is whether the sound of silence in the Fourth Circuit on the ethical and legal issues raised in the record below is loud enough for this Court to now reconsider the petition in *Safir v. Prudential* under the rule of *Hazel-Atlas Glass Co v. Hartford Empire Co.*, 322 US 238 (1944).

Petitioner has sustained the ordeal of this litigation in recent years without counsel, primarily because several sophisticated law firms have declined to represent him out of fear of sanctions in the Second Circuit. There fear expressed was grounded not in the merit (or lack of it) in the cause but rather the extrinsic influence had been too effectively used against him to be ignored. The recent unsuccessful appeals

and petitions incorporating the documentary evidence of fraud and bias bear witness to this fact. This Court now has before it the reaction of the Fourth Circuit as manifest in its unusual opinion. It remains to be seen whether the strengths of those influences remain.

Respectfully submitted,

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June 18, 1993

APPENDIX

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 92-1677

CSX Transportation, Incorporated;
The Connecticut National Bank,
Trustee Mortgage,

Plaintiffs-Appellees,

and

Callis Ship Guard Services, Incorporated,

Plaintiff,

v.

Marshall P. Safir,

Party in Interest-Appellant,

and

United States Cruises, Incorporated, In Personam,
The S/S United States, Her Engines, Tackle,
Apparel, Etc., In Rem,

Defendants,

NR Vessel Corporation, Marmara Marine, Incorporated;
United States Marshal,

Parties in Interest.

No. 92-1670

CSX Transportation, Incorporated;
The Connecticut National Bank,
Trustee Mortgage,
Plaintiffs-Appellees,

NR Vessel Corporation,
Party in Interest-Appellant,
and

Callis Ship Guard Services, Incorporated,
Plaintiff,

v.

United States Cruises, Incorporated, In Personam,
Defendant-Appellee,

Marmara Mnarine, Incorporated;
United States Marshal,
Parties in Interest-Appellees,

and

The S/S United States, Her Engines, Tackle,
Apparel, Etc., *In Rem,*
Defendant.

Appeals from the United States District Court
for the Eastern District of Virginia, at Newport News.
Robert G. Dourmar, District Judge.
(CA-91-141-NN)

Submitted: September 25, 1992

Decided; March 30, 1993

Before PHILLIPS and WILKINSON, Circuit Judges, and
SPROUSE, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

John Lucian Smith, Jr., OUTLAND, GRAY, O'KEEFE & HUBBARD, Chesapeake, Virginia, for Appellant NR Vessel Corp.; Marshall P. Safir, Appellant Pro Se. John R. Crumpler, Jr., Patrick Hugh O'Donnell, KAUFMAN & CANOLES, Norfolk, Virginia; Waverley Lee Berkley, III, JETT, BERKLEY, FURR & PADGETT, Norfolk, Virginia; Philip Norton Davey, DAVEY ASSOCIATES, P.C., Norfolk, Virginia; J. Phillip Krajewski, Assistant United States Attorney, Norfolk, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

NR Vessel Corporation (''NR'') and Marshall Safir seek to appeal the district court's confirmation of the sale of the passenger liner *S/S United States* and the distribution of the proceeds from its sale. Appellees filed motions to dismiss these appeals. Though we deny the motions to dismiss, we affirm the district court because it did not abuse its discretion in denying NR and Safir leave to intervene under Fed. R. Civ. P. 24(a)(2.

CSX Transportation (''CSXT''), a Virginia corporation, libeled the former passenger liner in an in rem admiralty proceeding in the Eastern District of Virginia to recover for two maritime liens. CSXT also proceeded in personam against the vessel's owner, United States Cruises, Inc. The owner appeared and

filed an answer in both the in rem and in personam suits. The holder of the preferred ship mortgage and mortgagee trustee, Connecticut National Bank ("trustee bank"), later intervened in the proceedings.

After some delay, the vessel was sold at a judicial sale on April 27, 1992 to Marmara Marine, Inc. ("Marmara"), a Delaware corporation. Marmara was the highest bidder at $2.6 million. No objections to the sale were filed within the two-day period for filing objections to judicial sales provided for in a local court rule. (E.D. Va. R. 23).

On May 6, the U.S. Marshal executed the bill of sale to Marmara. On May 14 the district court held a post-sale hearing and awarded CSXT $83,617 for in custodia legis expenses and $20,000 for the maritime tort of trespass. The district court also awarded the trustee bank $192,882.45 for in custodia legis expenses and the balance of the sale price, more than $2.25 million, as judgment on the mortgage. The district court did not dispose of the bank's and CSXT's in personam claims against United States Cruises, Inc., until two months later.

NR, the fourth highest bidder, a Delaware corporation and the Appellant in 92-1670, attempted to intervene on April 30, pursuant to Fed. R. Civ. P.24(a)(2). The district judge denied the motion, because at the time of the hearing on May 4 NR had not paid $8400 to cover the vessel's expenses for seven days, as required by Local Admiralty Rule (e)(15)(c). NR sought to invalidate the sale to Marmara, and to displace the second and third ranking bidders as well, by claiming their foreign control violated 46 U.S.C.A § 865a (West Supp. 1992). NR filed a timely notice of appeal from the district judge's denials of its motion to intervene and his order confirming the vessel's sale.

After the district confirmed the vessel's sale but before it disbursed the proceeds, Safir, the one-time owner of Sapphire

Shipping Lines, Inc., and the Appellant in 91-1677, unsuccessfully attempted to file with the district court a motion to intervene and for a stay. Safir maintains that he possesses a non-recorded maritime lien which arose prior to the ship's mortgage. He subsequently filed a notice of appeal from the district court's disbursement order.

On June 4, after NR had filed a notice of appeal but before Safir did so, the vessel reportedly left the port of Hampton Roads, Virginia, under tow and destined for Turkey for restoration. No party disputes that suggestion in their filings before this Court. Marmara moved to intervene pursuant to 4th Cir. I.O.P. 12.6 and to dismiss NR's appeal. Appellees CSXT and the trustee bank filed motions to dismiss both appeals.*

Only the original parties or intervenors in the district court proceedings may appeal district court judgments, except for those persons with an interest in the litigation who participated actively in the proceedings below. *Kenny v. Quigg*, 820 F.2d 665, 667-68 (4th Cir. 1987). NR filed for intervention as of right under Fed. R. Civ. P. 24(a)(2) and Safir's request appears to fit most closely the situation in Rule 24(a)(2) where an applicant claims an interest relating to the property or transaction which is the subject of the original proceeding.

A district court's denial of a motion to intervene under Fed. R. Civ. P. 24(a)(2) is reviewed for an abuse of discretion. *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989), *cert. denied*, 493 US. 1058 (1990). To secure intervention of right

*Appellees argued that this Court lacked jurisdiction over these appeals because the vessel had left the territorial jurisdiction of the district court. This "settled admiralty principle" is no longer applicable in cases of in rem forfeiture proceedings. *Republic Nat'l Bank v. United States*, 61 U.S.L.W. 4027 (U.S. 1992). We assume, without deciding, that this Court would retain jurisdiction, though the vessel left this country's waters, but we affirm for the reasons cited in the opinion.

in a district court proceeding, the moving party must file a timely request and satisfy the requirements for interest, impairment of interest, and inadequate representation. *Id.* An appellate court determining the timeliness of a motion to intervene should review such matters as how far the suit has progressed, the prejudice which delay might cause other parties, and any reasons for tardiness in moving to intervene. *Id.* at 286.

The district court did not abuse its discretion in denying NR leave to intervene because NR's request was untimely. NR failed to comply with the local court rule requiring the posting of adequate security to cover the vessel's expenses for one week. NR's request was made three days after the judicial sale of the vessel. If granted, NR's intervention likely would have required substantial additional litigation. *See Gould,* 883 F.2d at 286. NR sought to invalidate the sale of the *S/S United States* to Marmara, and to displace the second and third ranking bidders as well, by claiming their foreign control violated 46 U.S.C.A. § 865a. Therefore, we conclude that the district court did not abuse its discretion in denying NR's motion to intervene.

We also conclude that the district court did not abuse its discretion in denying Safir leave to intervene, though it never acted formally on Safir's motion. His request was made after the district court confirmed the sale of the *S/S United States*. In addition, granting Safir's intervention motion would have prejudiced other parties. Granting his motion would have required additional litigation over the priority of recorded and non-recorded maritime liens because Safir maintains that he possesses a non-recorded maritime lien which arose prior to the ship's mortgage.

Therefore, we affirm the district court's orders. Because our resolution of the intervention issue is dispositive, we do not reach the issue of the propriety of the sale of the vessel. *See Gould,* 883 F.2d at 284. We deny Appellees' motions to dismiss these appeals for lack of jurisdiction and to dismiss as moot and their motions to impose sanctions pursuant to Fed. R. App. P. 38. We deny leave to NR and Safir to intervene on appeal, but grant such right to Marmara, which filed a request pursuant to 4th Cir. I.O.P. 12.6. We also deny Safir's motion for an expedited decision.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

United States Court of Appeals
for the Fourth Circuit

DOCKETING STATEMENT

4CCA Docket No. 92-1677

Type of Action — Civil

CSX TRANSPORTATION, INC. et al.

v.

S.S. UNITED STATES IN REM
UNITED STATES CRUISES INC et al. IN PERSONAM
MARSHALL P. SAFIR APPLICANT FOR INTERVENTION

EASTERN DISTRICT OF VIRGINIA
JUDGE ROBERT C. DOUMAR
DISTRICT COURT DOCKET NUMBER 91-141-NN

Statute or other authority establishing jursidiction in the:
District Court — 28 USC § 31325

Court of Appeals 28 USC § 1292 (a)(3)

A. Timeliness of Appeal

1. Date of entry of judgment or order appealed from May 14, 1992

2. Date this notice of appeal filed — June 11, 1992

* * * * *

B. Finality of Order or Judgment

* * * * *

2. If no, a.) did the district court order entry of judgment as to less than all claims or all parties pursuant to FRCP 54(b)?
yes (x) no( )

b. Is the order appealed from a collateral or interlocutory order reviewable under any exception to the finality rule? yes (x) no ( )

If yes, explain — The Order had the effect of determining the rights of the APPLICANT to intervention.

* * * * *

E. State the nature of the suit, the relief sought, and the outcome below.

Suit instituted by CSX for wharfage. Trustee for 1st preferred ship mtge. was granted intervention. Appellant filed for intervention on May 7, 1992 claiming a priming maritime lien to the sale proceeds of the vessel. Court ordered distribution of the proceeds to others before Appellants conflicting claim was properly adjudicated. Relief requested to compel repayment to Safir under the continuing In Personam jurisdiction.

F. Issues to be raised on appeal. Attach one additional page if necessary.

1. Whether admiralty sale proceeds in the hands of the Court can be distributed in toto where there are adverse interests vested in others whose rights were not yet adjudicated.
2. Whether the Safir motion for intervention which included his affidavit of Feb. 21, 1992 (with 26 exhibits) to the US COURT OF APPEALS for the SECOND CIRCUIT was probative against laches.
3. Whether the validity of the Safir maritime lien claim was so clear under the recent decision of the SUPREME COURT in EXXON v. CENTRAL GULF LINES 111 S.CT. 2071 (1991) as to make the hasty release of the funds improvident, clearly erroneous and an abuse of discretion.

* * * * *

H. Is disposition on motions, memoranda, or an abbreviated briefing schedule appropriate? yes (x) no ( ) If yes, explain

on a separate sheet. Is oral argument necessary? yes( ) no (x)

I. Were there any in-court proceedings below? yes ( ) no (x)

Is a transcript necessary for this appeal? yes ( ) no (x)

* * * * *

J. List each adverse party to the appeal. Attach additional sheets if necessary. If no attorney, give address and telephone number of the adverse party.

1. Adverse party _____

Attorney — SEE COMPLETE LIST ATTACHED

* * * * *

K. Appellant(s) Name — MARSHALL P. SAFIR

* * * * *

Address (If incarcerated, give institution address)
271 GRAND CENTRAL PARKWAY
FLORAL PARK, N.Y. 11005
Telephone — 718-225-0210

L. Attorney or pro se litigant filing Docketing Statement. Will you be handling the appeal? (In criminal cases counsel below will handle the appeal unless relieved by this court.) yes (x) no ( )

Name MARSHALL P. SAFIR Attorney ( ) Pro se (x)

* * * * *

s/s Marshall P. Safir

6/16/92

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

FILED
MAY 14, 1992
JAK
CLERK
U.S. District Court
Norfolk, VA

CIVIL ACTION NO. 91-141-NN

CSX TRANSPORTATION, INC.,

Plaintiff,

and

CONNECTICUT NATIONAL BANK,

Intervening Plaintiff,

v.

UNITED STATES CRUISES, INC. *in personam,*

and

THE S/S UNITED STATES, her engines, tackle, apparel, etc., *in rem,*

Defendants.

O R D E R

The matters for decision before the court are *in custodia legis* expenses incurred while the vessel was under arrest from October 12, 1991, to May 6, 1992, and CSX Transportation, Inc.'s ("CSX") claim for maritime tort.

These matters came on for hearing before this court on May 11, 1992, and

It appearing to the court that the United States Marshal received advances on administrative costs for the safekeeping of the S/S UNITED STATES from plaintiffs in the total amount of $198,500.00 and that the United States Marshall has incurred fair and reasonable expenses including advertis-

ing costs in the total amount of $193,741.48, leaving a balance in the United States Marshal's account of $4,758.52 from plaintiffs' advances, and

It further appearing to the court that the successful purchaser of ther S/S UNITED STATES delivered to the United States Marshal funds in the amount of $2,080,000.00 representing the balance of the purchase price excluding the initial deposit of $520,000.00 presently in the registry of the court, and it appearing that the United States Marshal has deposited said $2,080,000.00 into the United States Marshal's account, which together with the unused $4,758,52 from plaintiffs' advances results in the United States Marshal presently having in his account the total sum of $2,084,758.52 in connection with this cause,

NOW, THEREFORE, it is ADJUDGED, ORDERED and DECREED that the United States Marshal be and he hereby is ordered and instructed by the court as follows:

1. To pay forthwith all of the fair and reasonable expenses of $193.741.48 incurred for the safekeeping of the S/S UNITED STATES not already paid;

2. To refund to the plaintiffs the $198,500.00 advanced by them in the proportions advanced, namely to pay to Waverly L. Berkley, III, counsel for Connecticut National Bank, the sum of $192,882.45 and to John R. Crumpler, Jr., counsel for CSX, the sum of $5,617.55;

3. To pay to himself, the United States Marshal, the sum of $39,015.00 as his commission on the sale of the S/S UNITED STATES;

4. To pay to John R. Crumpler, Jr., counself or CSX, the sum of $78,300.00 which amount this court deems to be the reasonable wharfage to which CSX is entitled based on the evidence presented, the memoranda submitted and the court's

consideration thereof to which ruling Connecticut National Bank excepts, and CSX excepts only as to the insufficiency of the $78,300.00 awarded; and

5. To pay to the Clerk of the court for deposit into the court's registry [with the $520,000.00 already in the registry as a result of the successful purchaser's initial deposit] the entire balance in the United States Marshal's account of $1,768,943.52 after payment of the amounts hereinabove set forth.

It is hereby further ADJUDGED, ORDERED and DECREED that the First Amended Complaint of CSX be and same hereby is filed *nunc pro tunc* as of March 20, 1992, and

It appearing to the court from the evidence presented, the memoranda filed and the testimony adduced at a hearing before the court on May 11, 1992, that the S/S UNITED STATES was guilty of the tort of maritime trespass from July 5, 1992, to October 12, 1992, that CSX sustained damages as a result of the trespass in the amount of $20,000.00 which amount constitutes a lien against the S/S UNITED STATES superior in priority to the first preferred maritime mortgage lien of Connecticut National Bank to which ruling Connecticut National Bank excepts, and CSX excepts only as to the insufficiency of the $20,000.00 awarded.

NOW, THEREFORE, it is ADJUDGED, ORDERED and DECREED that CSX be and it hereby is awarded judgment against the S/S UNITED STATES, *in rem*, in the amount of $20,000.00, and it is further ORDERED that the Clerk be and she hereby is instructed to pay to John R. Crumpler, Jr., counsel for CSX, the sum of $20,000.00 from funds presently in the court's registry to the credit of this cause.

It is hereby further ADJUDGED, ORDERED and DECREED that the intervening plaintiff, Connecticut National

Bank, be and same hereby is awarded judgment against the S/S UNITED STATES, *in rem,* in the sum of $6,330,412,60, the amount owed by United States Cruises, Inc. to said bank, which judgment constitutes a lien on the S/S UNITED STATES entitling the bank to the balance of all proceeds remaining from the sale of said vessel,

NOW, THEREFORE, it is further ORDERED that the Clerk of this court be and she hereby is instructed to pay to Waverly L. Berkley, III, counsel for Connecticut National Bank, and Connecticut National Bank the entire remaining balance in the registry of the court which, after deposit of the funds from the United States Marshal as hereinabove ordered, is $2,268,943.52, said payment to be credited against the judgment,*in rem* aforesaid.

The *in personam* claims of the plaintiff, CSX, and intervening plaintiff, Connecticut National Bank, against United States Cruises, Inc. shall await the further order of this court.

ENTERED this 14th day of May, 1992.

s/s Robert G. Doumar

Robert G. Dourmar, Judge
United States District Court
Newport News Division

Seen:
s/s John R. Crumpler, Jr.

John R. Crumpler, Jr., Esq.
Counsel for Plaintiff
KAUFMAN & CANOLES
A professional corporation
2000 NationsBank Center
Post Office Box 3037
Norfolk, Virginia 23514
804-624-3103
Virginia State Bar No. 4031

Seen:
s/s J. Philip Krajewski

J. Philip Krajewski
Assistant U.S. Attorney

EXCERPTS FROM TRANSMITTAL SHEET
(Notice of Appellate Action)

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF VIRGINIA
at Newport News

District Court No.: 4:91CV00141
4CCA No.: 92-1677
Consolidated with
No.: 92-1670

CSX Transportation, Inc., *et al*

v.

UNITED STATES CRUISES, INC., et al

Notice of Filing
Interlocutory Appeal
Transmittal of Record

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* * * * *

PART II
ORIGINAL RECORD
TRANSMITTAL OF RECORD TO COURT OF APPEALS
Pleadings: Vols. 1 & 2
Transcript: Vol. 3, 4, 5, 6, 7, & 8
Exhibits: Vols. 9
Lodged Items: Vols. 10
Ex. A-m Safir Vols 11
Ex. N-Z Safir Vols. 12
No. of Boxes: 1
Signature of Clerk or Deputy
Sharon L. Bailey
Dated Aug. 4, 1992

RELEVANT PAGES OF THE DOCKET SHEET

* * * * *

3/24/92 - 38 - ORDER FOR INTERLOCUTORY SALE that the S/S UNITED STATES, together with her engines, tackle, etc., be sold at public auction by the U.S. Mhsl of this Court, or his deputy, on the southside courthouse steps of the U.S. District Court for the Eastern District of Virginia, Newport News Division, 101 25th Street, Newport News, Virginia 23607, free and clear of all liens, as is, to the highest bidder after the posting of a notice on the bulletin board of this Court by the U.S. Mhsl, etc. The sale will take place at 12:00 noon on Monday, April 27, 1992, etc. (signed by Judge Robert G. Doumar) Copies Mailed: cnsl, o.b. U.S. Mhsl. (jkan) [Entry date 03/25/92]

4/7/92 — TRANSCRIPT of Hearing on Motion for dates of 10/10/91 (jkan) [Entry date 04/09/92]

4/21/92 — STIPULATION TO MORTGAGE INDEBTEDNESS By Connecticut National Bank and United States Cruises, Inc. (jkan)

4/27/92 — COURTROOM PROCEEDINGS: April 27, 1992, at Norfolk. RGD, j. Rept: R. Zahn. Appearances — John R. Crumpler, Jr., Patrick H. O'Donnell, Carter Gunn, Edward Powers, Waverly L. Berkley, III. Matter came on for hearing on motion of Pltf. (C.S.X.) for 90 day extension of Sale scheduled today. Comments of Counsel heard. Motion denied. (Marshal directed to proceed with Sale) (jkan)

4/27/92 — 40 — AFFIDAVIT of Fred Mayer. (jkan)

4/30/92 — 41 — ORDER that Motion to intervene and objection by intervenor to sale of vessel United States held by this

Court April 27, 1992 received from NR Vessel Corporation be lodged and not filed, etc. (filed at Norfolk) (signed by Judge Robert G. Doumar) Copies Mailed: April 30, 1992, as directed. (jkan) [Edit date 06/09/92]

4/30/92 — MOTION To Intervene of NR Vessel Corporation And Bief In Support and Objection by Intervenor NR Vessel Corporation To Confirmation of Bid Of Marmara Marine, Inc. LODGED by Order of Judge Robert Dourmar 4/30/92. (jkan)

4/30 92 — **Added party NR Vessel Corp. (jkan) [Entry date 05/28/92]

5/1/92 — 42 — Marshal's Return pursuant to Order of Interlocutory sale of vessel SS United States of April 27, 1992 at 12:00 noon. A (plan)

5/1/92 — 43 — Motion for Enlargement of Time and Brief in Support on behalf NR Vessel Corporation, Inc. (plan)

5/1/92 — 44 — AFFIDAVIT OF John L. Smith, Jr. on behalf of NR Vessel Corp. (plan) [Edit date 05/01/92]

5/4/92 — 45 — MEMORANDUM OF LAW Regarding The Applicability of 46 U.S.C. 865a To The Proposed Sale Of The S/S United States received on behalf pltf. (jkan) [Entry date 05/06/92]

5/4/92 — 46 — SUPPLEMENT TO OBJECTION By Intervenor NR Vessel Corporation To Confirmation of Bid of Marmara Marine, Inc. and Brief In Support filed at Norfolk. (jkan) [Entry date 05/06/92]

5/4/92 — **Added party Marmara Marine, Inc. (jkan) [Entry date 05/06/92]

5/4/92 — 47 — MOTION with Memorandum in Support by Marmara Marine, Inc. for Order of Sale filed at Norfolk. (jkan) [Entry date 05/06/92]

5/4/92 — 48 — Minute entry: Monday, May 4, 1992. RGD, j. Rptr: G. Meals. Appearances: John Smith, John R. Crumpler, Jr., Phillip Davey, Waveryly L. Berkley, Edward Power, Phillip Krajewski. Came on for hearing on Motions. Order Confirming Sale entered and filed. Matter continued until May 11, 1992, 10:00 a.m. Motion to intervene of NR Vessel Corporation denied. (jkan) [Entry date 05/06/92]

5/4/92 — 49 — ORDER OF CONFIRMATION of Sale that the sale of the S/S United States, her engines, tackle, apparel, etc., free and clear of all liens and encumbrances to Marmara Marine, Inc., a Delaware corporation, for the sum of Two Million Six Hundred Thousand and 00/100 Dollars ($2,600,000.00) is ratified and confirmed FURTHER Adjudged, Ordered and Decreed that the United States Marshal is directed to issue forthwith a Bill of Sale for the S/S United States, her engines, tackle, apparel, etc. free and clear of all liens and encumbrances to Marmara Marine, inc., a Delaware corporation, and to deliver the Bill of Sale to its Chief Executive Officer, Fred Mayer, or its counsel. The sale price of $2,600,000.00 shall remain in the registry of this court pending the further order of this court. (Signed by Robert G. Doumar). Copies Mailed: cnsl, U.S. mhsl, o.b. (jkan) [Entry date 05/06/92] [edit date 06/01/92]

5/5/92 — 50 — TRANSCRIPT for dates of 4/27/92 at Norfolk. (jkan) [Entry date 05/06/92]

5/7/92 — 51 — MOTION to Intervene by Marshall P. Safir, and to Stay filed at Norfolk. (jkan) [Entry date 05/08/92]

5/7/92 — 52 — AFFIDAVIT by Marshall P.Safir Re: [51-1] motion to Intervene by Marshal P. Safir, [51-2] motion to Stay (filed subject to defect at Norfolk. (jkan) [Entry date 05/08/92]

5/8/92 — 53 — BRIEF of CSX Transportation, Inc. received. (Filed May 8, 1992 at Norfolk) (jkan) [Entry date 05/11/92]

5/11/92 — 54 — COPY OF BILL OF SALE re: S/S UNITED STATES. (jkan) [Entry date 05/18/92]

5/11/92 — 55 — BRIEF OF CONNECTICUT NATIONAL BANK received. (jkan) [Entry date 05/18/92]

5/12/92 — 56 — Minute entry: Monday, May 11, 1992 at Norfolk. RGD, j. Rep.: Dick Zahn. John R. Crumpler, Jr., Esq. appeared on behalf of pltf., CSX Transportation, Inc., Waverly L. Berkley, III, Esq. appeared on behalf of intervenor-plaintiff, The Connecticut National Bank, Trustee Mortgage. J. Phillip Krajewski, A.U.S.A., appeared on behalf of the Marshal. Matter came on for a hearing on the wharfage rate and the tort claim by CSX Transportation, Inc. Comments of counsel and court heard. Evidence presented. Testimony of Alyn Fife, Ingrid Clark, Rick Cox and Jerry Talton heard. Final arguments of counsel heard. Court stated rulings from the bench. Court stated that $13,500.00 a month is reasonable wharfage for the period of time of this litigation. Court stated that the Marshal should pay $78,300.00 for reasonable wharfage. Court will allow CSX to amend its Complaint and file tort claim. Court awarded CSX $20,000.00 in tort damages. Court will not award prejudgment interest. Court directed CSX to prepare an Order according to the rulings the Court made today. (jkan) [Entry date 05/18/92]

5/15/92 — 57 — MARSHAL'S Summary of Costs. (jkan) [Entry date 05/18/92]

5/15/92 — 58 — ORDER that U.S. Mhsl pay $193,741.48 incurred for the safekeeping of the S/S UNITED STATES; refund pltf's $198,500.00 advanced by them; to pay U.S. Mhsl the sum of $39,015.00 as his commission on the sale of the S/S UNITED STATES; pay to John R. Crumpler, Jr. cnsl for CSX, the sum of $78,300.00 which amount court deems reasonable wharfage to which CSX is entitled; pay to the Clerk of the court for deposit into the Court's registry the entire balance in the U.S. Mhsl's account of $1,768,943.52, etc. Further ORDERED that the First Amended Complaint of CSX is filed nunc pro tunc as of March 20, 1992. It is ORDERED that CSX is awarded judgment against the S/S UNITED STATES, in rem, in the amount of $20,000.00. Further ORDERED that the Clerk is instructed to pay John R. Crumpler, Jr., cnsl for CSX, the sum of $20,000.00 from funds presently in the court's registry, etc. Further ORDERED that the intervening pltf, Connecticut National Bank, is awarded judgment against the S/S UNITED STATES, in rem, in the sum of $6,330,412.60, etc. Further ORDERED that the Clerk of this court is instructed to pay Waverly L. Berkley, III, cnsl for Connecticut National Bank and Connecticut National Bank, the entire remaining balance in the registry of the court which is $2,268,943.52, said payment to be credited against the judgment, in rem aforesaid. The in personam claims of the pltf, CSX, and intervening pltf, Connecticut National Bank, against United States Cruises, Inc. shall await the further order of this court. (filed at Norfolk May 14, 1992) (signed by Judge Robert G. Dourmar) Copies Mailed: cnsl, U.S. Mhsl, o.b. (jkan) [Entry date 05/18/92]

5/27/92 — 59 — NOTICE OF APPEAL by NR Vessel Corp. FILING FEE $105.00 RECEIPT # 02668 Copies sent to CSX TRANSPORTATION, U.S. CRUISES, INC., The SS United States, CALLIS SHIP GUARD, The SS United States,

U.S. Cruises, Inc., Connecticut Nat Bank, U.S. CRUISES, INC., The SS United States, Marmara Marine, Inc., Marshall P. Safir, NR Vessel Corp., U.S. Mhsl. (jkan) [Entry date 06/01/92]

6/9/92 — 60 — COPY OF DOCKETING STATEMENT of NR Vessel Corporation. (jkan) [Edit date 06/09/92]

6/9/92 — 61 — COPY OF TRANSCRIPT ORDER from NR Vessel Corportion. (jkan)

6/11/92 — 62 NOTICE OF APPEAL by Marshall P. Safir. FILING FEE $105.00 RECEIPT # 02701. Copies sent to CSX TRANSPORTATION, U.S. CRUISES, INC., The SS United States, CALLIS SHIP GUARD, The SS United States, U.S. Cruises, Inc., Connecticut Nat. Bank, U.S. CRUISES, INC., The SS United States, Marmara Marine, Inc., NR Vessel Corp. (jkan) [Entry date 06/15/92]

6/29/92 — 63 — TRANSCRIPT for dates of May 4, 1992. (jkan)

7/1/92 — 64 — ORDER that file be retained in Clerk's Office of U.S. District Court until all issues in the suit have been disposed of. Clerk is directed to send certified copy of docket entries in lieu of entire record, subject to request of Court of Appeals and right of any party to request at any time during the pendency of appeal that designated parts of the record be transmitted. Clerk is directed to send copy of this Order to Court of Appeals and all cnsl of record. (signed by Judge Robert G. Doumar) Copies Mailed: cnsl, o.b. (jkan)

7/2/92 — 65 — ORDER that judgment be entered in favor of CSX Transportation, Inc. against United States Cruises,

Inc. in the amount of $157,499.61. It further appearing to the court from the statement of counsel and the pleadings and materials and exhibits filed with the court that after payment to Connecticut National Bank of $2,268,943.52 in accordance with the Order entered of May 14, 1992, the balance due and owing Connecticut Nat. Bank by United States Cruises, Inc. is $4,061,4699.08. FURTHER ORDERED that judgment be entered in favor of Connecticut National Bank against United States Cruises, Inc. in the amount of $4,061,469.08. There being no further claims or demands, this matter is hereby DISMISSED from the docket. Entered July 1, 1992. (signed by Judsge Robert G. Doumar) Copies Mailed: cnsl, o.b. (jjan)

7/2/92 — Case Closed (jkan)

8/4/92 — RECORD on Appeal mailed to Court of Appeals (92-1670 & 92-1677).

DOCKET as of August 4, 1992 10:31 am

A TRUE COPY TESTE:
DORIS R. CASEY, CLERK
BY SHARON L. BAILEY
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

92-1677 CSX Transportation v. Safir
CA-91-141-NN

INFORMAL BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper, if necessary. you need not limit your brief solely to this form but you should be certain that whatever you file answers the questions below. In any event, the court prefers short and direct statements.

1. Did the district court fail to consider important grounds for relief. If so, what grounds?

The Court failed to consider an adverse interest before termination of the *in rem* proceeding. See Page 1 of Informal Supplemental Brief.

2. Did the district court incorrectly decide the facts? If so, what facts?

The Court decided the case without considering the fact that a preferred lien existed which arose prior to the endorsement and recordation of the ship mortgage. See Supplement.

3. Do you think the district court applied the wrong law? If so, what law do you want applied?

The Court failed to consider a violation of the lien enforcement statute. The law applicable to failure of the parties to give notice of the final hearing on

distribution of ship sale proceeds is 46 U.S.C. § 31325(d)(3). See Supplement.

4. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?

Yes. See Informal Supplemental Brief.

5. What action do you want the Court to take in this case?

Remand directing recovery of funds distributed and the implementation of a civil suit under 46 U.S.C. § 31325(d)(3). See Supplement.

6. If you think the Court should hear oral argument in this case, why do you think so?

No.

Marshall P. Safir

NOTARY NOT REQUIRED

IMPORTANT: A COPY OF THIS BRIEF AND ANY ATTACHMENTS MUST BE SENT TO ALL PARTIES IN THE CASE. PLEASE LIST BELOW THE NAMES AND ADDRESSES OF THE PARTIES WHO WERE SENT A COPY OF YOUR BRIEF, TOGETHER IWTH THE DATES ON WHICH THEY WERE SENT.